

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

BETTER DAYS AHEAD
OUTREACH, INC., et al.

Plaintiff,

v.

POTTSTOWN BOROUGH,

Defendant.

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No. 2:23-CV-04234

JURY TRIAL DEMANDED

**BOROUGH OF POTTSTOWN’S MOTION TO DISMISS PLAINTIFFS’ COMPLAINT
PURSUANT TO F.R.C.P. 12(b)(6)**

Defendant, Borough of Pottstown (“Pottstown”), by and through its undersigned counsel, Siana Law, LLP, hereby files this Motion to Dismiss pursuant to Federal Rule 12(b)(6), and in support thereof, avers as follows:

1. Plaintiffs Alfredo Beltran, Daniel Wanner, and Better Days Ahead Outreach, Inc., (“BDA”) filed a Complaint against the Borough of Pottstown asserting violations of their Eighth and Fourteenth Amendment rights (State Created Danger). (ECF 1).

2. The day after filing the Complaint, Plaintiffs filed a Motion for Preliminary Injunction (ECF 4) to which Pottstown respond on November 15, 2023 (ECF 14) with Supporting Brief (ECF 15).

3. A hearing was held on November 16, 2023 regarding Plaintiffs’ Motion for Preliminary Injunction along with argument on November 20, 2023. The Court has taken the request for Injunctive Relief under advisement.

4. Pottstown asserts that Plaintiffs fail to state a claim for which relief may be granted. F.R.C.P. 12(b)(6).

5. At the outset, Plaintiffs named the Borough of Pottstown, only, as a Defendant and

failed to allege any underlying civil rights violations against any individuals.

6. Without an underlying violation pled against any individual, the claims against Pottstown fail, as a matter of law. See, e.g. *Hill v. Borough of Kutztown*, 455 F.3d 225 (3d Cir. 2006).

7. Conversely, to the extent that the Borough of Pottstown is named as a Defendant, Plaintiffs fail to allege any facts to support a *Monell* violation, i.e., there are no allegations of violations of custom, policy, or practice. See, Cmplt.(ECF1). *Andrews v. City of Philadelphia*, 895 F.2d 1469 (3d Cir. 1990).

8. BDA lacks standing to pursue claims against Pottstown as it lacks any concrete injury – actual or imminent related to the asserted Eighth Amendment and State Created Danger claims. *Blunt v. Lower Merion School District*, 767 F.3d 247 (3rd Cir. 2014)

9. Furthermore, the factual allegations plead are insufficient to support a plausible claim for relief related to the asserted Eighth Amendment and State Created Danger claims. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)

10. As it relates to the asserted Eighth Amendment Claim (Count I); this Circuit does not recognize, nor has it cited approvingly, a prohibition of citing homeless persons for violations of ordinances stemming from the individuals housing themselves on Pottstown's property.

11. Plaintiffs' Fourteenth Amendment claim, based upon a State Created Danger, fails where Plaintiffs fail to meet the necessary elements. *Henry v. City of Erie*, 728 F.3d 275 (3d Cir. 2013).

12. For the reasons set forth herein and in the accompanying Memorandum of Law, the Borough of Pottstown is entitled to dismissal, as a matter of law.

Respectfully submitted,

SIANA LAW

By: /s/ **Sheryl L. Brown**

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this day a true and correct copy of Defendant Borough of Pottstown's Motion to Dismiss Plaintiffs' Complaint Pursuant to F.R.C.P. 12(b)(6) was served via ECF:

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Date: November 22, 2023

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